

TITLE 2800 - MINERALS AND GEOLOGY

MEMORANDUM OF UNDERSTANDING
between the
FOREST SERVICE,
US DEPARTMENT OF AGRICULTURE
and the
DEPARTMENT OF WATER AND NATURAL RESOURCES,
STATE OF SOUTH DAKOTA

This MEMORANDUM OF UNDERSTANDING is entered into by and between the Forest Service, United States Department of Agriculture through the Chief, Forest Service (hereafter the "Forest Service"), and the State of South Dakota, by the through the South Dakota Department of Water and Natural Resources (hereafter "State").

I. PURPOSE.

The purpose of this Memorandum of Understanding is to eliminate duplication of reclamation and bonding requirements for the use and reclamation of lands in the National Forest System incident to surface disturbing mineral operations under: (1) the United States Mining laws; (2) Forest Service issued special-use and prospecting permits involving mineral resources; (3) Forest Service authorized operations by private parties involving mineral materials for private use or sale; and (4) operations involving privately owned minerals underlying lands administered as part of the National Forest System.

This Memorandum of Understanding does not apply to those operations authorized by mineral license, permits, or leases, including coal leases, issued by the U.S. Department of the Interior, bonding procedures administered for the United states by agencies of the United States Department of the Interior, ~~nor sand, gravel, and construction aggregate licenses issued by the State.~~

II. AUTHORITIES.

The authorities of the Forest Service to enter into and implement this Memorandum of Understanding include, but are not necessarily limited to, the general statutory authorities of the Secretary of Agriculture to administer the national forests (16 U.S.C. 478, 551), and regulations pertaining to mineral resources (36 C.F.R. 228).

The authorities of the State of South Dakota to enter into and implement this Memorandum of Understanding include, but are not necessarily limited to, South Dakota Codified Laws, SS 34A-2^{45-E}, 45-6B, 45-6C, 45-6D.

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2. If, due to regulatory or statutory time deadlines, either party is required to issue its approval or permit prior to the other party's action on the application, the prior approval or permit shall be conditioned upon: (a) the receipt of the other party's approval or permit; and, (b) the filing with the State of surety in at least the amount required by the party giving the prior approval or permit.

This Section does not apply to State mining license.

3. The Division will be primarily responsible for the administration of the reclamation. The Forest Service has the right to notify the Division of any failure by the operator to meet Forest Service standards. If an operator fails to or refuses to perform the required reclamation, the Division shall ensure that reclamation on the site is completed and shall proceed to collect the costs therefore from the surety.

mining license

4. Every permit or exploration notice of intent issued by the State will contain a condition that the Division will not release the bond, in whole or in part, until the Forest Service has advised the Division that reclamation has been completed in a manner satisfactory to the Forest Service. The Division shall notify the Forest Service of the date and time of the inspection for evaluation of the reclamation, and shall offer the Forest Service the opportunity to accompany the inspector.

5. Nothing in the Memorandum shall prevent the Forest Service or the Division from requiring an operator to post an independent reclamation bond with the Forest Service or the Division if at any time the Forest Service or Division determines that the bond posted with the Division is inadequate for the protection of lands within the National Forest System, or is inconsistent with State or Forest Service policies or regulations.

6. The Forest Service and Division will jointly review any amended plan or change that requires a modification of the bond. If one party refuses to release the bond, it shall be held for that party pending satisfactory completion of the reclamation.

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6. The Forest Service and the Division shall periodically review the reclamation of on going mineral operations and shall adjust the value of the bonds to reflect any changes in the reclamation requirements. On request, each party will provide the other technical expertise not otherwise available to the requesting party from within its own organization. Such provisions must be consistent with the supplying party's program priorities, availability of expertise, and ability to respond to the request, whether for fiscal or other reasons.

D. Inspections.

1. During routine inspections of mining or exploration operations by either the Forest Service or the State, the party doing the inspection will notify the other of any noncompliance with applicable standards. Any operator found to be in noncompliance with an approved operating plan or permit will be notified immediately of corrective action to be taken. If the specified corrective action is not taken, enforcement action will be taken by the appropriate party.

IV. LIMITATIONS.

Nothing in this agreement will be construed as limiting or affecting in any way the respective authorities or legal responsibilities of the Forest Service or State, or as binding either the Forest Service or State to perform beyond the respective authorities of each, or to require the parties to obligate or expend funds in excess of those authorized and appropriated for expenditures.

V. AMENDMENTS.

Amendments to this Memorandum of Understanding may be proposed at any time by either party, and amendments shall become effective after written approval by both parties.

A meeting between the parties shall be scheduled one year following the effective date of this Memorandum of Understanding to discuss the implementation of and any amendments necessary to the Memorandum.

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The following Pen and Ink changes are made to the Memorandum of Understanding between the Forest Service, Department of Agriculture and the Department of Water and Natural Resources, State of South Dakota, dated March 9, 1986.

I. Purpose - Page 4 - Delete: for sand, gravel, and construction aggregate licenses issued by the State.

II. Authorities - Page 4 - Add: 45-6

III. Agreement - Page 5 - A. Agreements - Paragraph 2 - After "SDCL Chapter 45-6B - Insert: and regulations promulgated thereunder.

At the end of Paragraph 2 - Add: SDCL Chapter 45-6 (License to Mine) Pegmatite minerals, Construction aggregate and Limestone or Iron Ore strictly used in cement.

III. Agreement - Page 5 - B. Bonding - Paragraph 1 - 1st sentence after "State permit" Insert: State License.

2nd sentence - After "State Permit" Insert: State License.

At the end of Paragraph 2 - Add: This section does not apply to State Mining License.

Page 6 - Paragraph 4 - After "Every Permit" Insert: Mining License.

III. Authorities - Page 7 - C. Cooperation - Insert: (as subheading) for State Mining Permits and Mining License.

Paragraph 2 - After "Mining Permit" Insert: proposed operations under the Mining License.

Page 7 - Paragraph 2 - after "to visit the site" Insert: (If applicable)

/s/John J. Smith
John J. Smith, Secretary, South Dakota
Department of Water and Natural Resources

12/12/88

Date

/s/Richard C. Sweetman
Richard C. Sweetman, Chairman
South Dakota Board of Minerals and Environment

12/15/88

Date

/s/Richard D. Estes (for)
Darrel L. Kenops, Forest Supervisor
Black Hills National Forest

12/21/88

Date